

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

Case No. 19-10524-H

mitsubishi hitachi power
systems americas, inc.,

Respondent.

_____ /

**RESPONDENT'S UNOPPOSED MOTION FOR LEAVE
TO FILE CIVIL APPEAL STATEMENT OUT OF TIME**

*National Labor Relations Board v. Mitsubishi Hitachi Power Systems
Americas, Inc.*

Case No. 19-10524-H

RESPONDENT’S CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, Mitsubishi Hitachi Power Systems Americas, Inc. (“Respondent”) submits this Certificate of Interested Persons and Corporate Disclosure Statement:

1. Blank, Stacy D.—appellate counsel for Mitsubishi Hitachi Power Systems Americas, Inc.
2. Carter, Hon. Geoffrey—Administrative Law Judge for National Labor Relations Board
3. Cohen, David—Regional Director for Region 12 of the National Labor Relations Board
4. deMeza, Jr., William B. —trial counsel for Mitsubishi Hitachi Power Systems Americas, Inc.
5. Dheenan, Usha—appellate counsel for National Labor Relations Board
6. Habenstreit, David---appellate counsel for National Labor Relations Board
7. Hitachi, Ltd—parent (in a joint venture with Mitsubishi Heavy Industries, Ltd) of Mitsubishi Hitachi Power Systems--listed on Tokyo exchange as “6501”

*National Labor Relations Board v. Mitsubishi Hitachi Power Systems
Americas, Inc.*

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8. Holland & Knight LLP —trial and appellate counsel for Mitsubishi Hitachi Power Systems Americas, Inc.
9. Mitsubishi Heavy Industries, Ltd—parent (in a joint venture with Hitachi, Ltd) of Mitsubishi Hitachi Power Systems--listed on Tokyo exchange as “7011”
10. Mitsubishi Hitachi Power Systems— parent of company of Mitsubishi Hitachi Power Systems Americas, Inc.
11. Mitsubishi Hitachi Power Systems Americas, Inc.—Respondent
12. National Labor Relations Board—Petitioner
13. Plass, Shelley B.—appellate counsel for National Labor Relations Board
14. Plympton, John—trial counsel for National Labor Relations Board
15. Shahat, Mohamed—Charging Party
16. Uriol, Jessica Mendoza - appellate counsel for National Labor Relations Board
17. Zerby, Christopher—trial counsel for National Labor Relations Board

**UNOPPOSED MOTION FOR LEAVE
TO FILE CIVIL APPEAL STATEMENT OUT OF TIME**

Respondent/Cross-Appellant Mitsubishi Hitachi Power Systems Americas, Inc. (“MHPSA”) moves this Court for leave to file its Civil Appeal Statement out of time. A copy of the completed Civil Appeal Statement proposed for filing is attached as Exhibit A. As grounds for the motion, MHPSA states the following:

1. Petitioner National Labor Relations Board (“NLRB”) filed its Application for Enforcement of an Order of the National Labor Relations Board on February 12, 2019. On March 4, 2019, NLRB filed a Civil Appeal Statement in connection with its application. MHPSA filed its Cross-Petition for Review of an Order of the National Labor Relations Board on February 26, 2019. MHPSA, however, inadvertently failed to file its own Civil Appeal Statement accompanying the cross-appeal.

2. On March 27, 2019, the Court notified counsel for MHPSA that it had not received the Civil Appeal Statement. The Court instructed counsel to submit, within 14 days of the Court’s letter, a motion for leave to file the Civil Appeal Statement out of time, with the completed Civil Appeal Statement attached as an exhibit.

3. MHPSA respectfully requests that the Court accept for filing out of time the attached Civil Appeal Statement. MHPSA’s inadvertent failure to file the Civil

Appeal Statement within the time originally provided has not resulted in a material delay of the proceedings, nor has it prejudiced the NLRB in its preparation of its appellate submissions. The Civil Appeal Statement attached is virtually identical to the Civil Appeal Statement previously filed by the NLRB. It discloses no new issues and requires no additional action by the NLRB. The original briefing schedule is proceeding and the failure to file the Civil Appeal Statement in connection with the cross-appeal has required no extension of any deadlines. Counsel for MHPSA apologizes to the NLRB and to the Court for any inconvenience caused by its delay in filing the Civil Appeal Statement.

4. The undersigned counsel for MHPSA contacted Jessica Mendoza Uriol, Esq., counsel for the NLRB, regarding the motion for leave to file the Civil Appeal Statement out of time. Ms. Mendoza Uriol confirmed that the NLRB does not object to MHPSA's request to file the Civil Appeal Statement out of time.

WHEREFORE, MHPSA respectfully requests that this Court grant it leave to file the attached Civil Appeal Statement.

Respectfully submitted,

/s/ Stacy D. Blank

Stacy D. Blank

Florida Bar No. 772781

stacy.blank@hklaw.com

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Tampa, FL 33602

Phone: 813-227-8500

Fax: 813-229-0134

Counsel for Respondent

CERTIFICATE OF COMPLIANCE

Counsel for Respondent Mitsubishi Hitachi Power Systems Americas, Inc. certifies that this motion complies with Rules, 32(g)(1), 27(d)(1)(E), 27(d)(2)(A), 32(a)(5), and 32(a)(6), Federal Rules of Appellate Procedure. The motion includes 393 words as calculated by the word processing program, and has been prepared in a proportionally-spaced typeface using Times New Roman in a 14-point font and is double-spaced.

/s/ Stacy D. Blank

Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 8, 2019, I filed the foregoing document with the Clerk of the Court for the United States court of Appeals for the Eleventh Circuit by using the CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record via email or first-class mail.

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National Labor Relations Board
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Tampa, FL 33602

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/s/ Stacy D. Blank
Attorney

EXHIBIT A

Rev. 4/18

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: 19-10524-H

Caption: National Labor Relations Board v. Mitsubishi Hitachi Power Systems Americas, Inc.	District and Division: <u>N/A (Agency Case)</u> Name of Judge: <u>National Labor Relations Board (ALJ Geoffrey Carter)</u> Nature of Suit: <u>Alleged unfair labor practice</u> Date Complaint Filed: <u>3/31/2017</u> District Court Docket Number: <u>NLRB Case No. 12-CA-188952</u> Date Notice of Appeal Filed: <u>2/26/2019</u> <input checked="" type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action Has this matter previously been before this court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide (a) Caption: _____ (b) Citation: _____ (c) Docket Number: _____
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	Attorney Name	Mailing Address	Telephone, Fax, Email
For Appellant:			
<input type="checkbox"/> Plaintiff		National Labor	202-273-2960
<input type="checkbox"/> Defendant	For: NLRB	Relations Board 1015	202-273-0191 (fax)
<input checked="" type="checkbox"/> Other (Specify)	David Habenstreit Usha	Half Street SE	appellatecourt@nlrb.gov
	Dheenan	Washington, DC 20570	
	Jessica Mendoza Uriol		
For Appellee:			
<input type="checkbox"/> Plaintiff	For respondent/	Holland & Knight, LLP	813-227-8500
<input type="checkbox"/> Defendant	cross-appellant	100 N. Tampa Street,	813-229-0134 (fax)
<input checked="" type="checkbox"/> Other (Specify)	Mitsubishi:	Suite 4100	stacy.blank@hklaw.com
	Stacy D. Blank	Tampa, FL 33602	

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question	<input type="checkbox"/> Final Judgment, 28 USC 1291	<input type="checkbox"/> Dismissal/Jurisdiction	Amount Sought by Plaintiff: \$ _____
<input type="checkbox"/> Diversity	<input type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1)	<input type="checkbox"/> Default Judgment	Amount Sought by Defendant: \$ _____
<input type="checkbox"/> US Plaintiff	<input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b)	<input type="checkbox"/> Summary Judgment	Awarded: \$ _____
<input type="checkbox"/> US Defendant	<input type="checkbox"/> Interlocutory Order, Qualified Immunity	<input type="checkbox"/> Judgment/Bench Trial	to _____
	<input checked="" type="checkbox"/> Final Agency Action (Review)	<input type="checkbox"/> Judgment/Jury Verdict	Injunctions:
	<input type="checkbox"/> 54(b)	<input type="checkbox"/> Judgment/Directed Verdict/NOV	<input type="checkbox"/> TRO
		<input type="checkbox"/> Injunction	<input type="checkbox"/> Preliminary
		<input checked="" type="checkbox"/> Other <u>Final agency order</u>	<input type="checkbox"/> Permanent
			<input type="checkbox"/> Granted
			<input type="checkbox"/> Denied

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11th Circuit Docket Number: 19-10524-H

Based on your present knowledge:

- (1) Does this appeal involve a question of First Impression? ☐ Yes ☒ No
What is the issue you claim is one of First Impression? _____
- (2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute? ☒ Yes ☐ No

If Yes, provide

- (a) Case Name/Statute National Labor Relations Act
(b) Citation 29 USC 151
(c) Docket Number if unreported _____

- (3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that
- (a) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☒ No
(b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal? ☐ Yes ☒ No

If Yes, provide

- (a) Case Name _____
(b) Citation _____
(c) Docket Number if unreported _____
(d) Court or Agency _____

- (4) Will this appeal involve a conflict of law
- (a) Within the Eleventh Circuit? ☐ Yes ☒ No
(b) Among circuits? ☐ Yes ☒ No

If Yes, explain briefly:

- (5) Issues proposed to be raised on appeal, including jurisdictional challenges:

Whether substantial evidence supports the National Labor Relations Board's finding that Mitsubishi Hitachi Power Systems Americas, Inc. violated Section 8(a)(1) of the National Labor Relations Act (29 USC 158(a)(1)) by discharging Mohamed Shahat because he engaged in protected concerted activities.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND

SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 8th DAY OF April, 2019.

Stacy D. Blank
NAME OF COUNSEL (Print)

/s/ Stacy D. Blank
SIGNATURE OF COUNSEL